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CONTRACT FOR
Software License Agreement
Fulton County, Indiana

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Software License Agreement
Fulton County, Indiana
ARC #04-IN-198-FUL-00-40



THIS CONTRACT is entered into on this _____ day of _____, 200____ by and between the **Fulton County Commissioners** representing the **Fulton County Assessor**, State of Indiana, hereinafter referred to as *Licensee*;

and

Appraisal Research Corporation, an Ohio Corporation that is authorized to do business in the State of Indiana and whose permanent office is located at 101 East Sandusky Street, Findlay, Ohio 45840, hereinafter referred to as *Licensor*.

WITNESSETH

WHEREAS the Licensee is in need of a licensing agreement for the Licensor's software product listed in Exhibit A attached hereto, hereinafter referred to as *Software Product*.

WHEREAS the Licensor is the sole provider of the Software Product, and the Licensor agrees to provide said Software Product.

NOW, THEREFORE, the parties agree as follows:

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1. CONTRACT DOCUMENTS

- 1.1 This agreement and its exhibits hereto comprise the contract documents.

2. OVERVIEW

- 2.1 This agreement sets forth the terms and conditions under which the Licensee has retained the Licenser to provide the Software Product listed in Exhibit A attached hereto.
- 2.2 The Licenser has the right to control and direct the means, manner and method by which the services contained in the agreement shall be performed.
- * 2.3 The Licensee shall be responsible for all hardware and system software including the installation of Microsoft Windows operating system.
- 2.4 The Licenser's timely performance of its obligations under this agreement depends on the Licensee's timely performance of the Licensee's responsibilities under this agreement.
- 2.5 The Licenser's performance of this agreement is conditioned upon the nonoccurrence of a strike, fire, flood, disaster, rationing, governmental intervention or other cause beyond the Licenser's reasonable control which materially increases the cost or difficulty of the Licenser's performance.

3. TIMEFRAME

- 3.1 The Software Product shall be delivered to the Licensee within ten (10) days of the signing of this agreement. The installation is dependent upon the Licensee having and providing access to the required hardware and system software as described in Exhibit B.

4. COMPENSATION AND PAYMENT

- 4.1 As compensation for the Licenser's performance of its obligations under this agreement, the Licensee agrees to pay to the Licenser a fee of Twenty Five Thousand Five Hundred Dollars (\$25,500).
- 4.2 Payment to the Licenser shall be made within thirty (30) days of the signing of this agreement.

- 4.3 Any bill unpaid after thirty (30) days shall be subject to a one percent (1%) per month interest rate for each month, or part thereof, that the bill remains unpaid.

5. PERSONNEL

- 5.1 The Licensors services, facilities, and employment opportunities shall be available to all persons without regard to race, color, sex, creed, age, religion, or national origin.

6. LIABILITY

- 6.1 The Licensors shall carry public liability and workmen's compensation insurance.
- 6.2 The total liability of the Licensors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way related to this agreement shall not exceed the total compensation received by the Licensors under this agreement.
- 6.3 Any claim arising out of or related to this agreement must be brought no later than one (1) year after it has accrued, or one (1) year from the date that such defect to this agreement is discovered.

7. ENTIRE AGREEMENT

- 7.1 The agreement contains the complete and entire agreement between the parties.
- 7.2 There shall be no departure from the terms of this agreement or no change or alterations of this agreement without the express written consent of the parties.

8. PROTECTION OF SOFTWARE PRODUCT

- 8.1 The Licensee agrees and acknowledges that the Software Product, along with any modifications, upgrades or enhancements, and all copies thereof are the sole property of the Licensors.
- 8.2 The Licensee shall not disclose or make available to third parties the Software Product or any portion thereof without the written consent of the Licensors.

- 8.3 Nothing in this agreement shall be interpreted as granting the Licensee any right, title or interest in the Software Product.
- 8.4 The Licensee agrees not to divulge any system or operating procedures, or any material or information that is noted as proprietary.
- 8.5 The Licensee agrees to recognize the legality of the Licensor's copyright and proprietary, and agrees in good faith to secure the Licensor's right to the copyright and proprietary.
- 8.6 The Licensee agrees that at the conclusion of the agreement, the Licensee will continue to protect the Licensor's copyright and proprietary property.
- 8.7 The Licensee agrees to retain in confidence all information, ideas and concepts imparted to them by the Licensor concerning the Software Product.
- 8.8 The Licensee shall have, for the jurisdiction's use, unlimited access to the use of the object program code provided by the Licensor during the term of this agreement, that both the source and object code shall be kept on the Licensee's computer and shall be available for audit and inspection by the proper authorities, but that the Licensor shall retain the exclusive ownership and prohibit its release to or inspection by anyone without the advance written permission of the Licensor.

9. WARRANTIES

- 9.1 The Licensor warrants that the Software Product shall operate in accordance with the requirements of this agreement from the date of acceptance.
- 9.2 The Licensor warrants that it has the right to grant to the Licensee the use of the Software Product.
- 9.3 The Licensor warrants that the Licensee shall have quiet enjoyment use of the Software Product and the Licensor shall hold the Licensee harmless from any claims for any infringement of proprietary rights in the Software Product or any portion thereof that is brought during the term of this agreement.
- 9.4 The Licensor expressly disclaims any warranty for the software product. The software product and any related documentation is provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, or noninfringement. The Licensee shall be solely responsible for the selection, use, efficiency and suitability of the software product and the Licensor shall have no liability thereof.

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- 9.5 To the maximum extent permitted by applicable law, in no event shall the Licensor be liable for special incidental, punitive, indirect or consequential damages whatsoever, arising out of or in any way related to the use of the Software Product.
- 9.6 Notwithstanding any damages that the Licensee might incur for any reason whatsoever, the entire liability of the Licensor shall not exceed the lesser of the actual damages incurred or the amount actually paid for the Software Product.

10. LEGAL RESTRAINTS AND LIMITATIONS

- 10.1 The Licensor acknowledges that the Licensee, as a unit of local government and a political subdivision of the State of Indiana, is subject to restraints, limitations, regulations, and controls imposed or administered pursuant to numerous applicable laws, ordinances, rules and regulations of federal, state, regional and certain local governmental agencies or authorities. The Licensor agrees that all professional services rendered or performed by the Licensor pursuant to the provisions of the agreement shall be in compliance therewith.

11. GOVERNING LAW

- 11.1 This agreement shall be governed by and construed under the laws of the State of Indiana.

12. AUTHORITY TO EXECUTE

- 12.1 Each of the parties hereto covenants to the other party that it has lawful authority to enter into this agreement, that the governing or managing body of each of these parties has approved this agreement and that the governing or managing body of each of the parties has authorized the execution of this agreement in the manner hereinafter set forth.

13. SEVERABILITY

- 13.1 If any provision of this agreement is held to be invalid or otherwise unenforceable, the forcibility of the remaining provisions shall not be impaired thereby.

14. NO WAIVER

- 14.1 The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

15. NOTICES

- 15.1 All notices required or permitted under this agreement shall be in writing and sent by certified mail, return receipt requested with property postage affixed, to the parties at their designated address.

16. ACCEPTANCE AND FINAL ACCEPTANCE

- 16.1 At the completion of the installation, the Licensee shall be provided twenty (20) days to operate and test the Software Product. During this period, the Licensor shall furnish complete off-site telephone support in the form of consultation and/or remote diagnostic software support.
- 16.2 If the error, defect or nonconformity cannot be corrected by off-site support within two (2) business days of when the error was first reported the Licensor shall provide on-site support service at the beginning of the next business day, or as otherwise agreed upon.
- 16.3 At the conclusion of the testing period, if the Licensee has not notified the Licensor in writing of any such failure or defect in the Software Product, the Licensee shall be deemed to have given final acceptance of the Software Product.
- 16.4 Acceptance shall not relieve the Licensor of any responsibility with respect to any products or services that are defective or fail to comply with the specifications and requirements pursuant to the terms of this agreement.

17. SOFTWARE PRODUCT LICENSING

- 17.1 The Licensor reserves the right to conduct on-site reviews at the Licensee's site to insure that the Licensee is in compliance with the terms and conditions of this agreement.
- 17.2 The Licensee shall designate a primary person responsible for the installation and general coordination of computerized data processing activities. This person shall be expected to undertake the mastery of the technical aspects of the operation of the computer. This person shall work closely with the

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Licensor programmers to ensure coordinated overall operations, solution of operation problems, frequent and complete backup of all data files and other functions as may be deemed necessary for the overall efficient operation of the Licensor's Software Product.

- 17.3 The Licensee shall not modify the Software Product without the prior written consent of the Licensor.
- 17.4 The Licensee shall not transfer the Software Product to any other computer, except for backup purposes, without the written consent of the Licensor.
- 17.5 The Licensee and the Licensor agree that the Licensor does not sell or service the required computer hardware and system software.
- 17.6 The Licensee shall be responsible for providing appropriate hardware as specified by the Licensor in Exhibit B attached hereto upon which the Software Product may be installed.
- 17.7 The Licensor shall provide the Licensee and staff ten (10) days of on-site training in the use of the Software Product. Additional training shall be provided at the Licensor's prevailing rates.
- 17.8 The Licensor shall be responsible for supporting the installation of the Software Product by off-site telephone or online. If on-site support is required, it will at the Licensor's current prevailing rate.
- 17.9 The Licensor shall not be required to correct any defects at its expense in any of the Software Product caused by the Licensee's negligence, improper installation or operation of the Software Product.
- 17.10 The Licensor shall provide the Licensee with technical support and services under the terms and conditions of a separate agreement and at the Licensor's current prevailing charges.

18. TERMINATION OF AGREEMENT

- 18.1 The Licensor may terminate this agreement and any license granted to the Licensee hereunder if:
 - 18.1(A) The Licensee fails to pay the Licensor any license fee or charge.
 - 18.1(B) The Licensee is in default of any other provision of this agreement and such default is not cured within thirty (30) days after Licensee gives Licensor written notice thereof.

- 18.1(C) The Licensee becomes insolvent or seeks protection, voluntarily or involuntarily, under bankruptcy law.
- 18.2 In the event of any termination of the agreement or any license granted to Licensee hereunder, the Licenser may:
 - 18.2(A) Declare all amounts owed to the Licenser to be immediately due and payable.
 - 18.2(B) Require the Licensee to cease any further use of the Software Product or any portion thereof and immediately return the same and all copies thereof, in whole or in part.
 - 18.2(C) Cease performance of all Licenser's obligations hereunder without liability to Licensee.

19. STATE CERTIFICATION

- 19.1 The Licenser shall use commercially reasonable efforts to meet the certification requirements as provided in Indiana Administrative Code (IAC) Section 12, et seq.
- 19.2 If Licenser is unable to meet the certification requirements after using commercially reasonable efforts, Licenser's liability for damages of any kind resulting from a breach of the agreement, regardless of the form or action or theory of liability, shall not exceed Licenser's insurance coverage.
- 19.3 To the extent that a claim is not with Licenser's insurance coverage, Licenser's liability shall not exceed:
 - 19.3(A) In the event of damage associated with a service or hardware product, the fee paid by Licensee for that service or hardware product under the agreement
 - 19.3(B) In all other cases, the license fee paid by Licensee for use of the Software Product or Third-Party Software.
- 19.4 In no event shall Licenser be liable for any incidental, indirect, consequential, punitive or special damages, including without limitation, lost profits or revenues, lost goodwill or loss of business even if Licenser has, or should have had knowledge, actual or constructive, of the possibility of such damages.

20. PROGRAM PRODUCT BASIC REQUIREMENTS

- 20.1 The Licensee shall use its best effort to ensure that the Program Products meet the requirements set forth in the Indiana Administrative Code (IAC) Section 12-1-3 (50 IAC 12-1-3). These include:
 - 20.2 The Program Products shall price all classes or property strictly according to the laws of the State of Indiana.
 - 20.3 The Program Products shall produce all files and report for use by Licensee as required by the laws of the State of Indiana.
 - 20.4 The Program Products shall allow local officials to design their own supplemental files and reports using the Licensor's recommended third-party products.
 - 20.5 The Program Products shall provide the user with the ability to import, store, and export data both for use by the State of Indiana and to facilitate movement of data between the computer systems, as reasonably required by the Licensee.
 - 20.6 The Program Products shall provide the user with the ability to link a file used to store digitized photographs in a standard format.
 - 20.7 To the extent that the Licensor provides hardware to the Licensee, such hardware shall be compatible with the data export and transmission requirements to a standard format prescribed by the Department of Local Government Finance and Legislative Services Agency of the State of Indiana.

21. REQUIRED AGREEMENT PROVISIONS

- 21.1 The Licensor shall use its best efforts to ensure that the requirement set forth in Indiana Administrative Code (IAC) Section 12-12-1 (50 IAC 12-12-1) are met. These include:
 - 21.1(A) The Licensor shall submit to the Department of Local Government Finance and Legislative Services Agency all disputes regarding whether the Program Products meet the software standards as set forth by the State of Indiana.
 - 21.1(B) All disputes not covered above shall be resolved under the laws of the State of Indiana.

- 21.1(C) The Licensor shall use its best efforts to ensure that the Program Products comply with the provisions of IAC Section 12, et seq.
- 21.1(D) All provisions in the agreement shall be binding on all parties to the contracts and their successors or assigns.
- 21.1(E) To the extent the Licensor provides hardware to the Licensee, the hardware must be accepted and confirmed by the County's Assessor.
- 21.1(F) The Licensor shall use its best efforts to make any Program Product or service change that may be required as a consequence of a change in any law, rule, or state board policy statement relating to the Software Product, provided that the Licensor is compensated equitably, based on common industry rates, as are seasonably agreed to by the parties.

22. STATE OF INDIANA REAL PROPERTY ASSESSMENT MANUAL

- 22.1 The Licensor shall use its best efforts to ensure that the requirements set forth in 50 Indiana Administrative Code (IAC) 12 are met. These include:
 - 22.1(A) The Licensor has read and reasonably understands the requirements set forth in the State of Indiana Real Property Assessment Manual (50 IAC 2.3).
 - 22.1(B) The Software Product shall conform to the operational requirements set forth in the State of Indiana Real Property Assessment Manual (50 IAC 2.3)

IN WITNESS WHEREOF, the Fulton Commissioners representing the Fulton County Assessor, acting in behalf of said County, and an authorized representative of the Appraisal Research Corporation have signed this contract on the day and year first above written.

FULTON COUNTY, INDIANA

Richard A. Powell
Commissioner

Leshie R. Walters
Commissioner

12/6/04
Date

12/6/04
Date

Reggie D. Rose
Commissioner

12/6/04
Date

ATTEST

Denise J. Bonnell
Fulton County Auditor

12/16/04
Date

APPRAISAL RESEARCH CORPORATION

Richard H. Hoffman
Richard H. Hoffman, ASA, CFE, MAI
President & CEO

December 3, 2004
Date

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EXHIBIT A
LICENSOR'S SOFTWARE PRODUCT

The following Licensor's Software Product shall be included in the Software License Agreement, which is the subject of the contract attached hereto:

- A. Computer Assisted Mass Appraisal (CAMA) system for residential, agricultural, commercial, industrial and exempt classes of property.
- B. The Software License Agreement includes up to eight (8) computers (CPU units). Installation on addition computers will require the Licensee to purchase additional license agreements at the Licensor's current prevailing rate.

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EXHIBIT B CAMA SYSTEM REQUIREMENTS

Minimum Hardware and System Software to be provided by the Licensee.

User System:

- Windows XP operating system
- Pentium 1.4 Ghz processor
- 512 MB RAM
- 40 GB hard drive space

Server System:

- Windows Server 2003
- Pentium 2.0 or better Ghz processor
- DVD-R/-RW drive (example Pioneer 106)
- 1 Gig RAM
- System disk Raid 0 – mirrored disk (recommended)
- 120 or better GB Hard drive space
 - Raid 5 (recommended)
 - A minimum of three (3) 7200 or better RPM disks (recommended)
- 56k modem or high speed Internet connection
- Access 97 or 2000
- PC Anywhere

Note: For added reporting capabilities, Crystal Reports version 6.0 is suggested

Note: SQL Server may need to be purchased at a later date to facilitate Tax Accounting and/or CAMA version upgrades.